TURNER LAW FIRM, LLC

BY: ANDREW R. TURNER, ESQ.

76 South Orange Avenue - PO Box 526

South Orange, New Jersey 07079

973-763-5000

Attorneys for Plaintiff

ART 8574

#### Plaintiff

UNITED STATES OF AMERICA FOR
THE USE AND BENEFIT OF
ATLANTIC PLUMBING SUPPLY
CORP., a New Jersey
corporation, and ATLANTIC
PLUMBING SUPPLY CORP.,
individually

vs.

Defendants

B&S SHEET METAL MECHANICAL INC., RANCO CONSTRUCTION INC., and WESTERN SURETY COMPANY

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Case No.

Civil Action

COMPLAINT

Plaintiff Atlantic Plumbing Supply Corp., with its principal place of business located at 703 Joline Avenue, Long Branch (Monmouth County), New Jersey, by and through counsel, complaining of the Defendants says:

#### NATURE OF ACTION

1. This is an action brought under the 40 U.S.C. 3131-3134 by an unpaid supplier for work it performed for the United States

Department of Defense at McGuire Air Force Base/Fort Dix, New Jersey, on a project known as the "Joint Bases Dormitory," contract number W912DS-11-C-0011 ("Project" and "Contract" respectively).

2. In addition to the monies due and owing Plaintiff on account of the Project, Defendant B&S Sheet Metal Mechanical Inc. ("B&S") owes Plaintiff contractual collection fees, interest, and monies due on a book account with a total value of \$95,300.40. There is diversity of jurisdiction between Plaintiff and B&S on this portion of the lawsuit.

#### PARTIES

- 3. Plaintiff is a New Jersey corporation with its principal place of business located at 703 Joline Avenue, Long Branch (Monmouth County), New Jersey. Plaintiff also maintains a place of business at 543 Wrightstown-Sykesville Road, Wrightstown (Burlington County), New Jersey.
- 4. Plaintiff is in the business, <u>inter alia</u>, of selling plumbing supplies, equipment, and related materials to the trade for use in construction and other projects.
- 5. Defendant B&S is a corporation organized and existing under the laws of Pennsylvania, with a principal place of business located at 608 Nolan Avenue, Morrisville (Bucks County),

Pennsylvania. B&S has a registered office address of 2304 Maple Avenue, Croydon (Bucks County), Pennsylvania.

- 6. B&S executed and delivered to Plaintiff a credit application following which the parties conducted business over a number of years including, but not limited to, the Project which forms the principal portion of this lawsuit.
- 7. Defendant Ranco Construction Inc. ("Ranco") is a corporation organized and existing under the laws of New Jersey, with a principal place of business located at 2 Coleman Court, Southampton (Burlington County), New Jersey.
- 8. Ranco is the general contractor on the Project and the entity which obtained and is named as the principal in the performance bond obtained pursuant to the Miller Act.
- 9. Defendant Western Surety Company ("Western"), with a mailing address of PO Box 5077, Sioux Falls, South Dakota, is a corporation in the business, <u>inter alia</u>, of issuing payment and performance bonds.
- 10. Western issued its payment and performance bond number 58686530 ("Bond") on or about August 9, 2011 naming Ranco as the principal for the Project.

#### JURISDICTION & VENUE

- 11. Jurisdiction is mandated in the United States District Court for an action such as this which is brought pursuant to the terms of the Miller Act as set forth in 40 U.S.C. 3133(b)(3).
- 12. Jurisdiction rests in the District of New Jersey because the Project on which Plaintiff performed work is located at McGuire Air Force Base/Fort Dix, Burlington County, New Jersey.
- 13. The book account claim asserted by Plaintiff against B&S involves corporations of two different states, New Jersey and Pennsylvania, with a principal claim sum of \$95,300.40 (plus agreed collection fees), and jurisdiction is founded on diversity of citizens and amount in controversy under 28 U.S.C. 1332.

#### FIRST COUNT

- 14. Ranco was awarded the Contract for work on the Project which was to be performed at McGuire Air Force Base/Fort Dix, New Jersey. The Contract was awarded by the United States Department of Defense.
- 15. Pursuant to applicable federal law, Ranco obtained the Bond for the contract it was awarded.
- 16. At all relevant times, Ranco engaged B&S as one of its sub-contractors to work on the Project.

- 17. Plaintiff and B&S have been conducting business for a period of years pursuant to an executed credit application delivered by B&S to the Plaintiff. In connection with the business conducted by and between Plaintiff and B&S, B&S purchased goods, services, and materials from the Plaintiff for use on the Project.
- 18. B&S purchased goods, services, and materials from the Plaintiff pursuant to the credit application executed and delivered by B&S to the Plaintiff on or about August 31, 2005. A true and correct copy of the credit application is annexed as Exhibit A.
- 19. As part of the ongoing business relationship between Plaintiff and B&S, B&S purchased goods, services, and materials from the Plaintiff on an open account basis.
- 20. The purchases by B&S from the Plaintiff at issue in this lawsuit occurred between June 12 and October 4, 2013 as shown on Plaintiff's statement of account annexed as Exhibit B-1 through B-5.
- 21. The last date Plaintiff provided goods, services, and materials to the Project was October 4, 2013.
- 22. Plaintiff is owed the sum of \$78,490.47 for goods, services, and materials sold and delivered in connection with the Project.

- 23. The goods, services, and materials include items specifically picked up by B&S at Plaintiff's business location(s) together with materials which were delivered to the Project site by the Plaintiff in accordance with orders placed by B&S. In addition, items were delivered to B&S's business location with specific identification for the Project.
- 24. Contrary to the agreement between Plaintiff and B&S, B&S has failed, refused, and neglected to pay the balance due for goods, services, and materials supplied by the Plaintiff for the Project.
- 25. Plaintiff has provided to B&S its invoices and statements of work performed, services rendered, and/or goods supplied for use on the Project.
- 26. Upon information and belief, B&S provided to Ranco, as the general contractor, a statement of the goods, services, and materials delivered by the Plaintiff to the Project site.
- 27. Upon further information and belief, Ranco has provided a list of services rendered by its sub-contractors and requests for payment to the government for goods supplied and delivered, services rendered, and materials used at the Project, including those sold and delivered by Plaintiff.

- 28. Pursuant to general business terms, suppliers are to be paid promptly. This provision is also in accordance with the requirements of the Prompt Payment Act which is codified at 31 U.S.C. 3901, et. seq.
- 29. Pursuant to the Prompt Payment Act, an interest penalty must be paid to the sub-contractors or supplier for payment not made in accordance with its term. Plaintiff specifically reserves the right to seek an award of interest at the time judgment is entered.
- 30. The principal sum due for goods sold and delivered on account of the Project is \$78,490.47.
- 31. The last date upon which work was performed by Plaintiff at the Project was October 4, 2013.

WHEREFORE, Plaintiff demands judgment against Defendants B&S and Ranco, jointly and individually, for the sum of \$78,490.47, plus interest, costs of suit, attorney's fees, and such other relief as the Court deems fair, just, and equitable.

#### SECOND COUNT

32. Plaintiff repeats the allegations contained in the preceding paragraphs as although set forth herein at length.

- 33. Ranco was awarded the Contract for the subject Project in this lawsuit.
- 34. In compliance with applicable provisions of the United States Code, Defendant Western issued the Bond for the Contract awarded to Ranco, and for work to be performed at the Project site.
- 35. Western issued the Bond on August 9, 2011 for the Project.
- 36. There is presently due and owing to the Plaintiff the sum of \$78,490.47 for work performed, goods supplied, and/or services rendered by it on account of the Project.
- 37. This lawsuit is being instituted within one year of the last date the goods were supplied, materials delivered, and/or services rendered by the Plaintiff for the Project.
- 38. Pursuant to the Bond it issued, Western is liable for payment to Plaintiff.
- 39. Plaintiff is entitled to interest on its claim since it has not been promptly paid, and specifically reserves the right to calculate interest at the time judgment is entered.
- 40. Prior to filing the within lawsuit Plaintiff attempted to resolve this matter with Western by initially serving its notice of intention to file a claim pursuant to the Miller Act. Western responded to Plaintiff's initial inquiry by and through its

authorized agent CNA Surety. Although Plaintiff and CNA Surety exchanged additional correspondence they were unable to resolve the dispute or achieve payment which led to the filing of the within lawsuit.

WHEREFORE, Plaintiff demands judgment against Defendants B&S, Ranco, and Western, jointly and individually, on this count in the sum of \$78,490.47, plus interest and costs, together with such other relief as the Court deems fair, just, and equitable.

#### THIRD COUNT

- 41. Plaintiff repeats the allegations contained in the preceding paragraphs as although set forth herein at length.
- 42. Plaintiff sues B&S on this count for the total sum of \$95,300.40 pursuant to a book account and in accordance with the written agreement between these two parties.
- 43. The amount due is set forth on the summary of invoices reflecting goods sold and delivered by the Plaintiff to B&S, on an open account basis, in the total amount of \$95,300.40 as shown on Exhibit B-1 through B-5.
- 44. The goods and materials were sold and delivered as ordered by B&S from Plaintiff in accordance with an open account which was established when B&S executed and delivered a credit

application to the Plaintiff. A true copy of the executed credit application is annexed as Exhibit A.

- 45. Pursuant to the plain terms of the written agreement between Plaintiff and B&S, B&S is subject to a service charge for unpaid balances which are past due. In addition, B&S specifically agreed to pay a twenty-five (25%) percent collection charge in the event of default or if the account is placed with an attorney or bonded collection agency.
- 46. The said twenty-five percent of the balance of \$95,300.40 is \$23,825.10, for which amount judgment is also claimed.
- 47. As shown on the annexed Exhibit B-1 through B-5, the principal sum due from B&S to Plaintiff is comprised of the \$78,490.47 of goods and materials sold and delivered on account of the Project, together with an additional open account balance of \$9,102.99 for goods sold and materials delivered on jobs unrelated to the Project in the instant lawsuit.
- 48. Pursuant to the written agreement between Plaintiff and B&S service/interest charges have been added, together with the agreed collection fee.
- 49. The collection fee has not been added and is not applicable to Defendants Ranco and Western.

50. The balance due on this count from B&S to the Plaintiff totals \$119,125.50. This amount exceeds the jurisdictional threshold for claims for citizens of different states, and diversity jurisdiction exists for the United States District Court to adjudicate this claim.

WHEREFORE, Plaintiff demands judgment against Defendant B&S, alone, on this count for the principal sum of \$95,300.40, plus agreed collection fees of \$23,825.10, for a total of \$119,125.50.

WHEREFORE, Plaintiff demands judgment against all Defendants as follows:

- (a) jointly and individually against Defendants B&S, Ranco, and Western on Counts One and Two for the sum of \$78,490.47, plus interest, costs, attorney's fees, and such other relief as the Court deems fair, just, and equitable; and,
- (b) against Defendant B&S on Count Three for the total amount of \$119,125.50.

TURNER LAW FIRM, LLC Attorneys for Plaintiff

BY:

ANDREW R. TURNER

Dated: October 3, 2014

### EXHIBIT A

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EXHIBIT A

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### EXHIBIT B

#### Statement

REMIT TO: ATLANTIC PLUMBING SUPPLY CORPO PO BOX 627 Long Branch NJ 07740 732-229-0334

STATEMENT DATE: CUST NO: 11/30/13 5769

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PREV BALANCE	PAYMENTS	CREDITS	PURCHASES	SERVICE CHARGE	NEW BALANCE

FUTURE	31-60 DAYS	OVER 90 DAYS

#### Statement

REMIT TO: ATLANTIC PLUMBING SUPPLY CORPO PO BOX 627 Long Branch NJ 07740 732-229-0334

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07/10/13 52240474.001	DORM			-272.73
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07/23/13 S2245931.001	DORM			24.55
07/24/13 S2232622.002	1105-0038			9.87
07/24/13 S2242691.003	DORMS BARBS			300.00
07/24/13 S2245674.001	PVC TRAPS			7.69
07/24/13 S2246290.001	DORM			251.94
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07/26/13 S2067416.024	1105-0008 DORMS			-136.36
07/26/13 S2232622.003	1105-0038			3,938.65
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07/26/13 S2247037.001	DORMS			32.34
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#### Statement

REMIT TO: ATLANTIC PLUMBING SUPPLY CORPO PO BOX 627 Long Branch NJ 07740 732-229-0334

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PAGE: NO	
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07/31/13 S2249153.001	DORM/DWAYNE		80.37
07/31/13 S2249749.001	Serv Chrg		1,560.12
08/01/13 S2248602.001	DORMS		129.36
08/01/13 S2248813.001	DORM		37.22
08/01/13   \$2249226.001	INGLEWOOD SCHOOL		930.85
08/01/13 S2249226.002	INGLEWOOD SCHOOL		-404.09
08/01/13 S2249839.001	DWAYNE		562.29
08/01/13 52250012.001	DORM		31.04
08/01/13 S2250136.001	BLDG 541		6.64
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08/13/13   \$2254235.002	DORMS		10.40
08/15/13 S2255200.001	60-010 JACKSON GE		18.57
08/15/13 \$2255583.001	BUCKS TECH SCHOOL		254.97
	DORMS		65.41
08/16/13 \$2067416.031	1105-0008 DORMS		255.92
08/16/13 S2256390.001	DORM		2.95

PREVIDADAME PAYMENTS CREDITS PURCHASES SERVICE CHARGE WELL OF A VICE	333
PREVI BALANCE PAYMENTS CREDITS PURCHASES SERVICE: CHARGE HEN BALANCE	8
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FUTURE		31:60 DAYS	61 90 DAYS	OVER 90 DAYS
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#### Statement

REMIT TO: ATLANTIC PLUMBING SUPPLY CORPO PO BOX 627 Long Branch NJ 07740 732-229-0334

STATEMENT DATE	CUST NO.
11/30/13	5769
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4 of 5	: 1

DATE	FUNCTOR ANDROLD	nio/11	T Company	910000000000000000000000000000000000000
400000000000000000000000000000000000000	2067416.032	1105-0008 DORMS	INVOICE AMOUNT PAYMENTS/CREDITS	NET OUR
08/21/13/5	2067416.032			5,380.63
	2257507.001	1105-0008 DORMS		1,394.97
	2257645.001			839.72
	2258087.001	120 DORMS		7.98
	2258500.001	NCO		7.72
		456		26.76
08/22/13 5	2258694.001	BLDG 5401 FT DIX		116.36
	2259084.001	DORM		31.52
	2259185.001	120 DORM		303.31
	2259548.001	1105-0038		60.80
	2259548.002	1105-0038		70.75
08/26/13 S		120 DORM		346.24
08/26/13 S		100 MAN DORM		14.41
08/26/13 S	2260291.001	DORM		76.93
08/27/13 S2		1105-0008 DORMS		3,287.46
08/27/13 53		120 dorm		193.35
08/27/13 S2		120 DORM		17.79
08/28/13 52		DORM		172.73
08/28/13 52				-136.36
08/29/13 S2		1105-0008 DORMS		229.06
08/30/13 S2		124 DORM		445.60
08/31/13 S2		Serv Chrg	·	1,700.38
09/03/13 S2		1105-0008 DORMS		496.99
09/05/13 82		DORM		56.69
09/19/13 S2	2269215.001	BILL		76.93
	2269430.001	NORM DORM		148.00
	270199.001	DORM		223.41
09/23/13 52		1105-0008 DORMS		793.14
09/23/13 S2	2103912.003	1105-0026		1,913.34
09/23/13 52		5516 FT DIX		5.48
				3.40

F	555000000000000000000000000000000000000		600000000000000000000000000000000000000			
-	THEY DALANCE	CINIMIA	CKEDI 15	PURCHASES	SERVICE CHARGE	NEW BALANCE
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#UTURE	CURRENT	ST. DA DRIZ	61-90 DAYS	
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#### Statement

REMIT TO: ATLANTIC PLUMBING SUPPLY CORPO PO BOX 627 Long Branch NJ 07740 732-229-0334

# STATEMENT DATE: CUST NO. 11/30/13 5769 PAGE NO. 5 of 5

CUSTOMER

B&S SHEET METAL MECHANICAL INC.
608 NOLAN AVE

MORRISVILLE, PA 19067

DATE INVOICE NUMBER	PURCHASE ORDER NUMBER		I	
09/23/13 S2271148.001	DORM/NORM	INVOICE AMOUNT	PAYMENTS/CREDITS	NET DUE
09/23/13 52271148.001	DORM/NORM DORM/NORM			27.94
09/24/13   52271146.002				29.78
09/24/13   522/1/54.002   09/24/13   \$2271780.001	1 PROSPECT DORM			139.01
1				10.82
09/24/13 \$2272067.001	1 PROSPECT AVE			200.41
09/25/13 S2264171.001	1105-0044			1,830.71
09/25/13 S2272411.001	DORM		·	371.45
09/25/13 S2272416.001	DORM			-136.36
09/25/13 S2272644.001	DORM			22.15
09/26/13   \$2273224.001	DORM			192.44
09/26/13   \$2273226.001	DORM			-136.36
09/27/13 S2273263.001	1208-0006			935.72
09/27/13   \$2273694.001	888-848			159.10
09/30/13   \$2274909.001	Serv Chrg	ļ		1,561.01
10/02/13   \$2275898.001	CONDENSATE PUMP			353.65
10/03/13 S2276171.001	BALICAN WOODS			70.64
10/04/13 \$2275855.001				3.48
10/04/13 52276989.001	DORM			33.86
10/31/13 S2289115.001	Serv Chrg			1,713.68
11/30/13 S2301335.001	Serv Chrg	1,722.91		1,722.91
No-Lead Law Compliance:	Manufacturers will	no longer ma	ike	
or allow returns of prod	lucts used for potab	le water		
containing lead. We are	unable to accept re	turns for st	ich	
products				

PREV BALANCE	PAYMENTS	CREDITS	PURCHASES	SERVICE CHARGE	NEW BALANCE
93 577 49	0 00	0.00	0.00	1 777 61	GE 300 40
		0.001	0,00	1,144,71	95,300.40

	FUTURE	CURRENT	31-60 DAYS	61-90 DAYS	OVER 90 DAYS
}					
L	1,722,91	2,175.31	8,921.80	31,058.35	51,422.03

All past due balances subject to SERVICE CHARGES of 2% per month.